IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1657 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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NITINCHANDRA D. NAYAK - Petitioner
Versus
GENTRAL MANAGER-TELECOM DIST. - Respondent

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Appearance :
MR ZUBIN F BHARDA for Petitioner.
MR KETAN A DAVE for Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 02/08/2006

ORAL JUDGMENT

1. **RULE.**

Mr.Ketan Dave, learned advocate appears and waives service of notice of rule on behalf of respondent - Central Manager, Telecom District, Post – Valsad, District – Valsad.

2. By filing instant petition, under Article 227 of the Constitution of India, the petitioner – original defendant seeks to challenge the order dated 26.12.2005 recorded below application – exhibit 135 in Regular Civil Suit No. 113 of 2000 by the learned Principal Civil Judge, Gandevi, by which the application filed by the petitioner – original defendant to open the stage of cross – examination of plaintiff's witness, which was closed and the prayer for permitting the petitioner to cross examine the plaintiff witness has been rejected.

2. The respondent- original plaintiff has filed Regular Civil Suit No. 113 of 2000 for recovery of dues of Rs. 41,675/- from the petitioner along with the interest which were due towards the telephone Nos. 53392 and 53563 comprising of Rs. 27,430/- and Rs. 14,245/- respectively.

3. The petitioner- original defendant was served with the notice. Upon notice being served, the petitioner filed written statement denying the claim of the plaintiff-respondent and also filed a counter claim alleging negligence of the part of the original plaintiff, as according to the petitioner the service of the above two telephone numbers were disconnected without rhyme or reason, which ultimately resulted into loss of business to the petitioner.

4. The learned trial Judge framed the issues on the basis of pleadings of both the parties. Thereafter, evidence of the witness of the original plaintiff was recorded before the trial Court wherein the Examination-in-Chief of the witness of the original plaintiff was recorded as per Order 18, Rule 4 of the Code of Civil

Procedure by way of written affidavit.

5. Thereafter, the petitioner and his lawyer could not remain present on account of difference of opinion between the petitioner and his lawyer. In view of the above fact, the Court has closed the evidence of plaintiff without cross-examination by the petitioner. Therefore, the petitioner filed application – exhibit 135 to reopen the stage of cross – examination of the plaintiff's witness, which has been rejected, which has given rise to the present petition.

6. Mr.Zubin Bharda, learned advocate of the petitioner submitted that on account of difference of opinion between the petitioner and his lawyer, the petitioner could not remain present before the trial court on various adjournments, which has resulted into passing of impugned order i.e. closure of the evidence. He therefore, urged that in the interest of justice, this petition may be allowed by permitting the petitioner to cross – examine the plaintiff's witness.

7. Mr.Ketan Dave, learned advocate of the respondent, has drawn the attention of this Court to the reply affidavit filed by the respondent. He states that the petitioner was negligent from the very beginning. He has further highlighted the attitude of the petitioner, how negligent the petitioner was at the stage of cross – examining the plaintiff's witness, as stated in para 3 of the reply affidavit. Therefore, according to him, the learned trial Court was right in rejecting the application. He therefore, urged that the petition lacks merit and deserves to be rejected.

8. This Court has considered the submissions advanced by Mr.Bharda, learned advocate of the petitioner and Mr.Ketan Dave, learned advocate of the respondent. It is true that the petitioner has remained negligent, after the evidence of the plaintiff had commenced. The petitioner ought to have cross examined when the witness was in the box. The petitioner took several adjournments and did not cross examine the plaintiff's witness, therefore, the trial Court has closed the stage of cross examination of the plaintiff's witness.

9. According to this Court, to do substantial justice between the parties and as the petitioner has filed counter claim against the suit filed by the respondent, opportunity must be given to the petitioner to cross examine the plaintiff's witness. Therefore, this petition deserves to be allowed by quashing and setting aside the impugned order and thereby permitting the petitioner to cross – examine the plaintiff's witness as well as to lead the oral evidence.

10. Mr. Bharda, learned advocate for the petitioner states and undertakes that now the petitioner will remain present before the trial Court on the adjourned date and without seeking any time he shall cross examine the plaintiff's witness and also tender his oral evidence, if any, at the earliest.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 26.12.2005 recorded below application – exhibit 135 in Regular Civil Suit No. 113/2000 is hereby quashed and set aside, result of which is that the application – exhibit 135 is allowed and the petitioner is permitted to cross examine the

plaintiff's witness without seeking any adjournments and tender his oral evidence, if any, at the earliest.

Rule is made absolute with no order as to costs.

Direct service is permitted.

[A.M.KAPADIA, J.]

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